IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4086 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? :

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JIGNESHKUMAR CHIMANLAL PATEL

Versus

STATE OF GUJARAT

Appearance:

MR RK MISHRA for Petitioners

Mr.Digant P. Joshi for Respondent Nos.1, 2 & 4.

MR AMIT M PANCHAL for Respondent No. 3

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 08/05/2000

ORAL JUDGEMENT :

The petitioners are the the persons who re possessing qualification of SSC and PTC and their names appeared in the merit list at serial nos.2 and 3. The petitioners had earlier approached this Court by filing a

Special Civil Application No.7859 of 1998 and the said Special Civil Application came to be disposed of along with Special Civil Application No.5218 of 1998, wherein directions were issued by this court for constitution of a Vidya Sahayak Committee, which came to be constituted by a Resolution dated 31.8.1998.

2. It is the case of the petitioners that the petitioners were called for the interview which were scheduled to be held on 21.4.1999 in the office of the District Primary Education Officer at Himatnagar. At the relevant time an undertaking was taken from the petitioners that the petitioners would forego the claim to the post of Assistant Teachers and that they will be placed in the post of Vidya Sahayak with a consolidated salary of Rs.2500/-. The petitioners had given an undertaking to that effect. It is the case of the petitioners that thereafter, the whole process of appointing the persons to the post of Vidya Sahayaks came to be cancelled by the respondent authorities on account of financial crisis of the State Govt. and subsequently instead of Vidya Sahayak, another scheme of Balguru came to be introduced. It is the case of the petitioners that the authorities have issued orders of appointing the persons who are below the petitioners in the merit list. The petitioners made several attempts to convince the authorities about their legitimate claim, but the petitioners have not received any satisfactory reply. Recently, the petitioners came to know that the authorities have issued a new advertisement inviting applications for the same posts. It is the case of the petitioners that if a new list is prepared, the petitioners' cause would get frustrated. Hence the petitioners have approached this Court by way of this petition praying for the relief to the effect that the Court shall hold and declare that the petitioners are entitled to get appointment orders as they were selected and their names had appeared in the merit list (a copy of which is produced at Annexure 'A'), at serial nos.2 and 3 respectively. It is also prayed that a direction be issued to the respondents to consider the case of the petitioners and a further direction to the respondents to issue orders of appointment in favour of the petitioners with the benefits of seniority from the date their juniors were appointed along with the benefits of pay fixation and similar other monetary benefits including the payment of salary from the date their juniors are given appointment.

3. This Court issued notice on 15.6.1999 and thereafter on 20.7.1999, rule was issued. At the time of

issuing rule, the Court observed as under:

".. .. The office is directed to place this matter for final hearing in the Court on 17th August 1999. In the meanwhile, if the respondents so desire, they may file reply to the SCA."

4. An affidavit in reply is filed by one Shri V.J. Valand, District Primary Education Officer, District Panchayat, Sabarkantha, where in para 4 it is stated that:

".. .. I say that on a perusal of the said advertisement it is more than clear that as on 1.7.1991, a candidate should have an age of not less than 18 years and not more than 28 years. I say that the petitioners are admittedly not having the age of 18 years as on 1.7.1991 and therefore, on checking the relevant record and more particularly the birth certificates, it was found that they do not have the requisite age and consequently could not be given the said appointment as Vidya Sahayaks/ Primary Teachers in the schools run by the District Panchayat."

5. The aforesaid contention regarding the petitioners being not within the age prescribed is devoid of any merit inasmuch as on the date of interview the petitioners were within the prescribed age and that is why their names were placed in the select list at serial nos.2 and 3, (a copy of which is produced at Annexure 'A'). In view of that the petition deserves to be allowed. Hence the same is allowed.

6. The respondents are directed to consider the case of the petitioners for giving appointment/ posting to the petitioners within the Taluka during the ensuing summer vacation. The respondents shall consider the case of the petitioners without being technical about the age of the petitioners in light of the fact that earlier when the petitioners' case was considered, they were within the age limit and that their names found place at serial nos.2 and 3 in the merit list.

7. The respondents shall consider the case of the petitioners along with the other persons for giving posting to them during this summer vacation. The petition is allowed accordingly. Rule is made absolute with no order as to costs. Direct service is permitted.

(Ravi R. Tripathi, J.)

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